



KEENER AND
ASSOCIATES P.C.

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August 24, 2023

VIA CM/ECF

The Hon. Judge George C. Hanks, Jr.
United States District Judge
United States District Court for the Southern District of Texas

Re: Civil Action No. 4:23-cv-02371, *Good Sportsman Marketing, LLC v. Chen, et al.*

To the Honorable Judge George C. Hanks, Jr.,

This letter serves as a request for a pre-motion conference. Defendants in this matter are requesting a pre-motion conference regarding their intent to file a motion to dismiss, pursuant to rule 12(b)(6), of the operative complaint in this matter. [Dkt. No. 6].

Defendants' motion to dismiss the complaint will be based on the following legal principles:

- Plaintiff's claim of copyright infringement (Count I) should be dismissed. Plaintiff's copyright registration covers its technical drawings which were never obtained by Defendants in this case. Plaintiff's claims that Defendants' products infringe its technical drawing is improperly expanding its copyright registration into the realm of patent law. Plaintiff's design of its ear muffs are not protected under the Copyright Act. See *Ultraflo Corp. v. Pelican Tank Parts, Inc.* 845 F.3d 652 (5th Cir 2017).
- Plaintiff's claim that Defendants violated the Lanham Act (Count II) is without merit. Plaintiff asserts that Defendants violated its unregistered trade dress in its ear muffs. However, Plaintiff has not identified the discrete elements of its trade dress that Defendants have violated. Plaintiff is alleging that the features of its products are protected by trade dress, improperly seeking a monopoly over features of its products without regard to whether they qualify for patent protection. See *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159 (1995).
- Plaintiff's claims that Defendants violated state law and common law should be dismissed because those claims are preempted by the Copyright Act. See e.g. 17 U.S.C. § 301; *Ultraflo Corp. v. Pelican Tank Parts, Inc.* 845 F.3d 652 (5th Cir 2017).

I conferred by telephone and email with David Cabello, counsel for Plaintiff Good Sportsman Marketing, LLC on August 21, 2023 regarding the relief requested in this

motion. Mr. Cabello stated that Plaintiff disagreed with Defendants' position and would oppose Defendants' motion.

Dated this August 24, 2023

Respectfully submitted,

By: /s/ Kevin Keener

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